

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Arthur Albano	Team: Squad #4	CCRB Case #: 201603445	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 04/16/2016 1:00 AM	Location of Incident: [REDACTED]	Precinct: 52	18 Mo. SOL 10/16/2017	EO SOL 10/16/2017	
Date/Time CV Reported Sat, 04/16/2016 1:20 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/21/2016 11:30 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Joel Ayala	08262	954509	052 PCT
2. POM Sean Kern	10507	955000	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joel Ayala	Abuse: Police Officer Joel Ayala stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	[REDACTED]
B.POM Sean Kern	Abuse: Police Officer Sean Kern stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	[REDACTED]
C.POM Sean Kern	Abuse: PO Sean Kern threatened § 87(2)(b) with the use of force.	[REDACTED]

Case Summary

On April 16, 2016 at approximately 1:00 a.m., § 87(2)(b) was driving with § 87(2)(b) in the passenger seat on § 87(2)(b) in the Bronx. From § 87(2)(b) § 87(2)(b) made a left turn onto University Avenue and then PO Joel Ayala and PO Sean Kern of the 52nd Precinct activated their lights and sirens. § 87(2)(b) continued driving for several more blocks before eventually stopping his vehicle next to a fire hydrant, § 87(2)(b) in the Bronx (**Allegation A and B**).

§ 87(2)(b) exited his vehicle and began walking away when PO Ayala and PO Kern pulled their van up next to him, and exited their vehicle. PO Kern attempted to stop § 87(2)(b) and § 87(2)(b) denied that he was driving the stopped vehicle. PO Kern and PO Ayala placed § 87(2)(b) in handcuffs and placed him in their van. PO Ayala and PO Kern then approached the stopped vehicle and asked § 87(2)(b) for registration and paperwork for the vehicle, which § 87(2)(b) could not provide. From the officers' van, § 87(2)(b) began yelling at § 87(2)(b) to not tell the officers anything. He also began kicking the windows of the police van and yelling at passersby to record the incident. As he was yelling, PO Kern allegedly stated to § 87(2)(b) that he was going to, "Break his jaw." (**Allegation C**). § 87(2)(b) a resident of § 87(2)(b) awoke to the sounds and filed this complaint with IAB, reporting that she witnessed an officer arguing with the driver of a stopped vehicle to exit his vehicle. She then reported that she observed that officer open the driver's door enter the vehicle while the occupant was still inside, and drove away with the occupant, followed by a police van.

Due to § 87(2)(b)'s demeanor, the officers transported § 87(2)(b) and their vehicle back to the stationhouse to further investigate the ownership of the vehicle, as no paperwork had been provided. At the stationhouse, PO Ayala determined that the vehicle belonged to one of § 87(2)(b)'s relatives. Officers also ran warrant checks on both § 87(2)(b) and § 87(2)(b). Officers then issued § 87(2)(b) a summons for disorderly conduct and § 87(2)(b) a summons for Failure to Signal and Reckless Driving. Both were released, with their vehicle soon after receiving their summonses.

Video Footage

Video footage was obtained from the building security camera of § 87(2)(b). The video footage captures § 87(2)(b)'s vehicle stopping, § 87(2)(b) exiting his vehicle and walking away, and the interaction between officers and § 87(2)(b) from the vehicle. The footage does not capture § 87(2)(b)'s initial interaction with officers, including when § 87(2)(b) is handcuffed and placed in the van. (Board Review 01)

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation.
- A notice of claim inquiry was sent to the NYC Comptroller's office on July 18, 2016 and a response to this inquiry will be included in the case file upon its receipt.
- § 87(2)(b)

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Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by or involving § 87(2)(b) or § 87(2)(b)
- PO Sean Kern has been a member of the service for three years, and this is his first CCRB complaint.
- PO Joel Ayala has been a member of service for three years, and there are two other complaints filed against him containing six allegations. § 87(2)(g)

Potential Issues

The investigation was able to establish contact with both § 87(2)(b) and § 87(2)(b) however neither of them cooperated with the investigation. § 87(2)(b) missed two appointments without prior notice. § 87(2)(b) missed one scheduled appointment without prior notice, and failed to respond to numerous follow-up calls and a missed appointment letter. § 87(2)(b) a non-involved witness was the only sworn civilian statement obtained during the investigation.

Findings and Recommendations

Allegations not pleaded

- Abuse of Authority- Both § 87(2)(b) and § 87(2)(b) were frisked before being placed in the police van and taken to the stationhouse. The vehicle was also removed to the precinct. The frisks and limited vehicle search in this case were incident to a custodial arrest, and will be considered in their totality within Allegations A and B.

Allegation A –Abuse of Authority- Police Officer Joel Ayala stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation B- Abuse of Authority- Police Officer Sean Kern stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) (Board Review 03) alleged that she looked out of her third story window and heard a voice, determined to be § 87(2)(b)s, yelling at passersby, “Could someone record this?” and that officers were trying to plant something on him. § 87(2)(b) could only see a stopped car, a police van behind it, and an officer arguing with the occupant through the window of the vehicle to get out of the vehicle. She also heard general screaming for people to record the incident, and that the officers were attempting to plant something on him which she attributed to the occupant, § 87(2)(b). However, § 87(2)(b) acknowledged that the voice she was hearing could have been coming from the police van, and the investigation determined that these statements were attributable to § 87(2)(b).

§ 87(2)(b) also alleged that she heard an officer order someone out of the vehicle, and when they would not comply, opened the door to the vehicle, entered it, and drove the vehicle away, followed by a police van.

§ 87(2)(b) stated that at University and 192nd Street, he was making a left turn and § 87(2)(b) nearly crashed into a marked van parked on the opposite side of the street. § 87(2)(b) weaved out of the way to avoid the officers. § 87(2)(b) did not think that the subsequent police sirens were for him, so he continued driving. The police van chased § 87(2)(b) until he pulled over. § 87(2)(b) claimed that the officers immediately pulled § 87(2)(b) out of the vehicle and placed him in their police van, and then pulled him out of the vehicle and made him stand at the back of his vehicle. The officers then questioned him who the car belonged to and § 87(2)(b) stated that it was his aunt's vehicle. The officer continued to ask § 87(2)(b) questions and § 87(2)(b) responded, "Fuck you, my license is good, my paperwork is good. Just do your job." The officers then handcuffed him, searched his vehicle, and one of the officers told him to get into their van, and § 87(2)(b) stated that he wanted to stay there while they searched his car. While this was happening, § 87(2)(b) yelled to § 87(2)(b) from the van to watch the officers search his car. After the search, § 87(2)(b) was also placed in the police van and the officers took § 87(2)(b) and their vehicle to the stationhouse. The two and their vehicle were released 30-45 minutes later with summonses.

After the discovery of video evidence from the security camera of § 87(2)(b) as well as officer testimony, the investigation established that § 87(2)(b) only observed a portion of the incident.

The investigation established that PO Ayala (Board Review 04) and PO Kern (Board Review 05) stopped § 87(2)(b) and § 87(2)(b)'s vehicle in regards to traffic violations. Officers initially activated their lights and sirens at University and § 87(2)(b), but § 87(2)(b) continued driving for about five blocks, and eventually stopped near § 87(2)(b). PO Kern ultimately issued moving violation summonses to § 87(2)(b) however, video footage establishes that § 87(2)(b) was initially driving the vehicle and it suggests (by the brake lights reactivating and apparent movement inside the vehicle, that after § 87(2)(b) walks away from the vehicle, § 87(2)(b) moved into the driver's seat from the passenger's seat.



2016-07-21_2-02-52.mp4

PO Kern stopped § 87(2)(b) after seeing him exit the vehicle and requested his ID. § 87(2)(b) refused to provide his ID and further denied that he exited the stopped vehicle. PO Kern and PO Ayala also stated that § 87(2)(b) took on an aggressive stance, squaring his shoulders and clenching his fists, telling the officers, "You better not touch me." The officers then placed him in handcuffs and inside the police vehicle in order to conduct a safer vehicle stop.

When the officers approached the vehicle, they asked § 87(2)(b) for his license and registration. However, § 87(2)(b) could not provide any paperwork for the vehicle. From the police van, § 87(2)(b) began yelling to § 87(2)(b) to not tell the officers anything, and kicking at the windows of the van, threatening to break them.

The officers, considering § 87(2)(b)'s demeanor, and seeing that people from § 87(2)(b) were likely being awoken and looking out of their windows at § 87(2)(b) decided to finish investigating the ownership of the vehicle, run warrant checks, and issue summonses for the violations at the stationhouse. As such § 87(2)(b) and their vehicle were all brought to the stationhouse. After PO Ayala's investigation, he discovered that the vehicle belonged to § 87(2)(b)'s relative, and they released § 87(2)(b) and § 87(2)(b) with summonses for the moving violations and § 87(2)(b) for Disorderly Conduct (Board Review 06).

NYPL §240.20 states that a person is guilty of disorderly conduct when with the intent to cause public inconvenience, annoyance, or alarm, a person makes unreasonable noise. (Board Review 07)

§ 87(2)(b), § 87(2)(g)
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Allegation C- Abuse of Authority- PO Sean Kern threatened § 87(2)(b) with the use of force.

In a phone statement from § 87(2)(b) he alleged that PO Kern stated to § 87(2)(b) that he was going to break his jaw. As stated in the Potential Issues section, both § 87(2)(b) and § 87(2)(b) were uncooperative with the CCRB in regards to providing a sworn statement towards the investigation.

§ 87(2)(b) denied hearing any threats of force, but also only witnessed a portion of the incident, from a distance. Both PO Kern and PO Ayala denied that PO Kern threatened to break § 87(2)(b)'s jaw, or threaten § 87(2)(b) in any way.

§ 87(2)(b), § 87(2)(g)
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Pod:

Investigator:	_____	_____	_____
	Signature	Print	Date

Pod Leader:	_____	_____	_____
	Title/Signature	Print	Date

Attorney:	_____	_____	_____
	Title/Signature	Print	Date